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SUBJECT: Canada's Treaty-making Process

Ref: 04 Ottawa 1982

¶1. (SBU) Summary: Canada in January 2008 revised its treaty-making process to include review of all international treaties by the House of Commons before entry into force. The government, however, will maintain the legal authority to decide whether to ratify the treaty; no vote in Parliament is necessary for signing or ratification of a treaty. This new process could serve as another delay for Canada's long-anticipated copyright legislation, which is necessary to bring Canada in compliance with the World Intellectual Property Organization (WIPO) Internet treaties. End summary.

¶2. (U) Canada makes treaties only with sovereign states, not with subdivisions (e.g., provinces, states, cantons) or with departments of governments (e.g., Department of Transportation, Department of Energy). This cable outlines Canada's treaty-making process. A more detailed description is available as "Annex A" at the following GoC URL - <http://www.treaty-accord.gc.ca/Tabling.asp>

¶3. (U) Before commencing negotiations with the other party, the lead Canadian department or agency must seek a negotiating mandate from the Cabinet. Once that mandate is granted, the responsible department, with the approval of the Minister of Foreign Affairs, may begin negotiation. (In certain cases, the Cabinet has approved blanket authority for negotiation, such as for Foreign Investment Protection Agreements, Double Taxation Agreements, Mutual Legal Assistance Treaties, Extradition Agreements, Social Security Agreements and International Civil Aviation Agreements, and, in some rare cases, a general authority for a Minister to negotiate arrangements exists in statute).

¶4. (U) Once negotiations with the other party are complete, the relevant department or agency prepares a submission to Cabinet seeking policy approval to sign and ratify the treaty, as well as approval to introduce any legislation necessary to bring the treaty into effect. If the Cabinet grants policy approval, the Foreign Minister then submits an "Order in Council" submission to the Treasury Board committee to seek legal authority to sign the treaty. (Note: An "Order in Council," or OIC, is the instrument by which the Governor General, acting on the advice of the Queen's Privy Council for Canada, expresses decisions. The Treasury Board fulfills the role of Committee of the Privy Council and is unique in that it is the only Canadian Cabinet committee created by statute. End note) The "Order in Council" will also seek an "Instrument of Full Powers," which grants a particular individual the authority to sign the specific treaty in question; only the Governor General, the Prime Minister, and Minister of Foreign Affairs have standing to sign for Canada without producing an "Instrument of Full Powers." Subsequently, after additional Parliamentary review (see paras 5 and 6) a second, separate OIC submission goes to the Treasury Board to obtain legal authority to ratify the treaty.

¶15. (U) No vote in Parliament is necessary for signing or ratifying a treaty; the authority to negotiate and enter into agreements is held solely by the executive. However, the Conservative government on January 25 announced that it henceforth will table all international treaties in the House of Commons before taking further steps to bring these treaties into force. The procedure is similar to procedures used in the United Kingdom and Australia. The government nonetheless made clear that it retained the power of ratification, and that this new procedure would not be binding on successor governments.

¶16. (U) Under the new process, the government, after signing a treaty but prior to ratification, will observe a waiting period of 21 sitting days from the date of the tabling a treaty before taking any action to bring the treaty into effect. When treaties require legislative amendment to bring Canada into compliance, the government has made a commitment to delay the legislation until this 21 sitting-day period has passed. The House may debate the agreement, if it chooses to do so. Very exceptionally, the government may bind Canada to a treaty before tabling it in the House, but in those cases the government has made a commitment also to inform the House at the earliest opportunity.

¶17. (SBU) Comment: While the new process is non-binding on future governments, it will be difficult to abandon it once the Commons has become accustomed to this role. Of more direct interest to the USG, the new procedures could complicate the government's efforts to bring Canadian law into compliance with the WIPO Internet treaties, which Canada signed in the late 1990's but has not yet ratified. It remains unresolved whether the WIPO treaties will have to be tabled in Parliament for the 21-sitting-days before the associated copyright legislation is introduced. (Canada's failure to implement and ratify the WIPO treaties has been a key factor in USTR's

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placement of Canada on the Special 301 Watch List.) End Comment.

Wilkins